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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/671,106	09/28/2000	Randal K. Buddington	2343-104-27	8636
7590	03/16/2004		EXAMINER	
Patent Prosecution Services Piper Marbury Rudnick & Wolfe LLP 1200 Nineteenth Street, N.W. Washington, DC 20036-2412				EVANS, CHARESSE L
		ART UNIT		PAPER NUMBER
		1615		

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/671,106	BUDDINGTON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Charesse L. Evans	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 12 December 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 16-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 16-36 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: .

## DETAILED ACTION

### *Action Summary*

Acknowledgement is made of the receipt of applicant's amendment and remarks, filed December 12, 2003.

Pursuant to applicant's request for clarification, the rejection then of record of claims 16-20 and 22-24 under 35 USC 103(a) over Cooper (US 5,051,408) were withdrawn in view of the new rejection set forth in the Office Action mailed August 12, 2003, over Paul et al (US 6,241,983 B1).

The rejection of record of claims 16, 17, 20 and 22 under 35 USC 102(e) over Paul et al (US 6,241,983 B1) is withdrawn.

Acknowledgement is made of the addition of new claims 27-36.

Claims 16-20, 22-24 and 27-36 are pending in this action.

### *Response to Arguments*

Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive. Applicant argues that the cited prior art references fail because they do not expressly teach the inhibition or treatment of systemic infections. Examiner disagrees with this position. It is the Examiner's position that by applying

the disclosed Paul composition, that one inherently rids the body of toxins, infections or parasites that reside in ones body, both systemically and locally. Parasites, for instance, depress immune system functioning by decreasing the secretion of immunoglobulin A or IgA. These toxins, pathogens and parasites can reside in the colon as well as in other parts of the body, such as the lungs, brain and blood, so it would be obvious to one of ordinary skill in the art to utilize the disclosed composition to aid in the elimination of this foreign material.

Paul teaches an orally administered composition for promoting gastrointestinal health comprised of an effective amount of dietary fiber (Abstract and Column 3, lines 39-57). The dietary fiber is a member selected from the group consisting of fructo-oligosaccharides, such as inulin, pectins and pectic polysaccharides, and mannans such as guar gum (column 4, lines 1-10). The referenced composition can be used for treating conditions facilitated by infections caused by pathogenic microorganisms such as E.coli, Salmonella and Candida (column 16, lines 21-26). Paul reads on each and every aspect of the above-referenced claims. Thus, Paul anticipates claims 20, 16, 17, and 22.

Van Loo et al teaches a fructan-containing composition with an average degree of polymerization of 15 or higher (column 4, lines 22-28 and claim 1). Van Loo discloses chicory inulin with an average degree of polymerization of about 25 (claim

18). The daily doses effective in providing prevention against disease states such as colon cancer, range from 0.01 to 2g/kg body weight (column 5, lines 51-54).

Paul in combination with Van Loo teaches the claimed invention.

This rejection is maintained.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

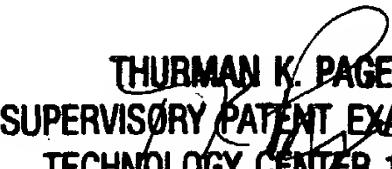
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charesse L. Evans whose telephone number is 571-272-0593. The examiner can normally be reached on Monday - Thursday 7:00a - 4:30p; Alternating Fridays 7:00a - 3:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charesse L. Evans  
Examiner  
Art Unit: 1615

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

March 10, 2004